

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID PAUL WOLF, §
TDCJ-CID NO.468145, §
Plaintiff, §
v. § CIVIL ACTION H-12-0767
§
RICK THALER, *et al.*, §
Defendants. §

OPINION ON DISMISSAL

By this complaint, Plaintiff David Paul Wolf, a state inmate, has filed a second lawsuit in this Court against Dr. Fausto Avilla and Physician's Assistant Lisa Vatani. In this suit and in *Wolf v. Harrington*, Civil Action No.11cv3492 (S.D. Tex.) (filed September 21, 2011), plaintiff complains that Avilla and Vatani, among others on the Wallace Pack Unit, were deliberately indifferent to his medical needs, retaliated against him for filing suit in another federal district court, discriminated against him because of his disability, and refused to furnish adequate transportation on September 8, 2011, which caused him to fall and suffer an injury. (Docket Entry No.1); Civil Action No.11cv3492 at Docket Entries No.1, No.4. Although plaintiff names other defendants in each suit, the facts alleged in each suit and the legal basis of each suit are the same. Therefore, the Court will dismiss this action because it is duplicative and thus, filed maliciously.

Maintenance of the pending civil rights action would be redundant and an impermissible waste of judicial resources. *See Mayfield v. Collins*, 918 F.2d 560, 561-62 (5th Cir. 1986); *Ferguson v. Mbank Houston, N.A.*, 808 F.2d 358 (5th Cir. 1986). A federal court may dismiss an inmate's civil rights action if the court determines that the

action is malicious. 28 U.S.C. § 1915(e)(2)(B)(i). Duplicative cases are malicious as a matter of law under § 1915. *See Hill v. Estelle*, 423 F.Supp. 690 (S.D. Tex.), *aff'd*, 543 F.2d 754 (5th Cir. 1976). Duplicative claims can be dismissed *sua sponte*. *Wilson v. Lyndaugh*, 878 F.2d 846 (5th Cir. 1989).

Because plaintiff's complaint is malicious, the Court ORDERS that it be DISMISSED with prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).¹

Plaintiff's application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(e) is GRANTED. Plaintiff shall pay the entire \$350.00 filing fee under 28 U.S.C. § 1915(b). The Inmate Trust Fund of the Texas Department of Criminal Justice shall deduct twenty per cent (20%) of each deposit made to plaintiff's trust fund account when the account exceeds \$10.00, and forward the funds to the Clerk on a regular basis in compliance with the provisions of 28 U.S.C. § 1915(b) until the fee has been paid.

The Clerk will provide copies of this Order to the parties, to the TDCJ - Office of the General Counsel, P.O. Box 13084, Capitol Station, Austin, TX 78711, Fax 512-936-2159; the Inmate Trust Fund, P.O. Box 629, Huntsville, Texas 77342-0629, fax 936-437-4793; and to the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention: Three Strikes Manager.

SIGNED at Houston, Texas, this 4th day of June, 2012.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE

¹ This dismissal counts as plaintiff's second strike pursuant to 28 U.S.C. § 1915g. *See Wolf v. Southers*, Civil Action No.1:99cv1220-ZLW (D. Co. 11-19-1999) (dismissed as legally frivolous)..